

Application No. 10/797,981
Docket No. 9576
Amendment dated December 12, 2007
Reply to Office Action mailed on September 28, 2007
Customer No. 27752

REMARKS

Claim Status

Claims 1- 10 and 15-19 are pending in the present application.

Rejection Under 35 USC §102 Over U.S. Patent Application No. 2006/0165642 (hereinafter referred to as "Ellis")

Claims 1-3, 5, 7, 10, 16 and 18 are rejected under 35 U.S.C §102 (e) as anticipated by Ellis. The Office Action states that Ellis teaches all of the instantly required claim limitations and is considered anticipatory.

This rejection is traversed.

The present invention relates a lathering personal cleansing composition. The lathering personal cleansing composition comprises a) from about 0.05% to about 5.0% of an alkyl ethoxylated polymer; b) from about 0.1% to about 5% of a cross-linked acid copolymer; c) from about 0.1% to about 30% of a particulate material selected from the group consisting of a cleansing agent, exfoliating agent and mixtures thereof; and d) from about 4% to about 30% of a lathering surfactant selected from the group consisting of anionic, amphoteric and zwitterionic.

The Applicants respectfully submit that Ellis does not disclose each and every limitation of the claims of the present invention, therefore, Ellis does not anticipate the claims of the present invention. Specifically, Ellis does not teach a personal cleansing composition that comprises alkyl ethoxylated polymers. Under §102, anticipation requires that all the claim elements appear in a single prior art document. "A claim is anticipated only if each and every element set forth in the claim is found, either expressly or inherently described, in a single prior art reference" MPEP §2131 citing *Verdegai Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2D 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim" MPEP §2131 citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2D 1913, 1920 (Fed. Cir. 1989).

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Because Ellis does not disclose each and every element of the present application, it cannot as a matter of law anticipate the claims of the present application. Therefore, the Applicants respectfully request withdrawal of the rejection on this basis.

Rejection Under 35 USC §103(a) Over Ellis in view of U.S. Patent No. 6,589,517 (hereinafter referred to as "McKelvey") and U.S. Patent No. 6,635,702 (hereinafter referred to as "Schmucker-Castner").

Claims 4, 6, 8, 9, 15, 17 and 19 are rejected under 35 U.S.C. §103(a) as being unpatentable over Ellis in view of McKelvey and Schmucker-Castner.

The Office Action states that Ellis teaches generally alkyl ethoxylated polymers. The Office Action states that Ellis does not specifically name alkali-swellaable acrylate copolymers, but does suggest use cross-linked polymers. The Office Action states that McKelvey teaches a tri-alkyl ethoxylated polymer and a tetra-alkyl ethoxylated polymer. The Office Action states that Schmucker-Castner teaches a stable aqueous composition containing a cross-linked alkali-swellaable acrylate copolymer. The Office Action states that Schmucker-Castner teaches that the uses of cross-linked alkali-swellaable acrylate copolymers are common in the art and a person skilled in the art would be able to determine an effective amount to give an appropriate BYV. The Office Action concludes that it would be obvious to one of skill in the art at the time of the instant invention to include di, tri or tetra alkyl ethoxylated polymers, thus resulting in the instant claimed invention with a reasonable expectation of success.

The Applicants respectfully traverse the rejection.

In a recent case regarding the appropriate standard for establishing obviousness, the Supreme Court stated:

"[A] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. Although common sense directs one to look with care at a patent application that claims as innovation the combination of two known devices according to their established functions, it can be important to

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identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in a way claimed new invention does. This is so because inventions in most, if not all, instances rely upon building blocks since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense is already known." KSR International Co. v. Teleflex, Inc. 127 S. Ct. 1727, 1741 (2007) emphasis added

The rejected claims rely on a specific combination an ethoxylated polymer, cross-linked polymer, particulate material and a lathering surfactant. By using a combination of ethoxylated polymers for thickening and cross-linked polymers for suspension in the present invention, one can obtain a product that is stable as wells as lathers and rinses well.

The Examiner has not identified a reason that would have prompted a person of ordinary skill in the relevant field to combine Ellis, McKelvey and Schmucker-Castner. To this end, a declaration of Timothy Coffindaffer, an inventor on the above identified application has been submitted with this response. Mr. Coffindaffer demonstrates in the declaration that each reference alone in combination does not teach or suggest the present invention.

Mr. Coffindaffer states that none of the cited references, Ellis, McKelvey and Schmucker-Castner, teach or suggest the advantages and benefits of the combination of an ethoxylated polymer, cross-linked polymer, particulate material and a lathering surfactant used in the present invention. Ellis does not disclose any information about alkyl ethoxylated polymers. McKelvey discloses and teaches the use of ethoxylated polymers, but does not teach the use of water soluble surfactants or lathering compositions. Schmucker-Castner discloses and teaches the use of a cross-polymer only and does not disclose or teach the use of alkyl ethoxylated polymer. Mr. Coffindaffer states the declaration, states Schmucker-Castner teaches the use of cross-polymers alone for suspension and rheology to achieve target viscosity thus, one skilled in the art would not combine the teachings of Schmucker-Castner with that of Ellis or McKelvey.

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Therefore, the Applicants respectfully disagree that it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the cite references to result in the compositions of the present invention. Thus, the Applicants respectfully submit that the rejection should accordingly be withdrawn.

Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied reference(s). In view of the foregoing, reconsideration of this application, and allowance of the pending claim(s) are respectfully requested.

Respectfully submitted,

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